

ENTERED

June 23, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

JOE PADILLA,

Plaintiff,

VS.

DITECH FINANCIAL LLC, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:19-CV-094

ORDER ADOPTING REPORT AND RECOMMENDATION

In June 2019, Defendant Ditech Financial, LLC removed this case from a Texas state court based on diversity of citizenship. (Notice, Doc. 1) Ditech then filed a motion to dismiss any claims for damages, a motion for summary judgment, and a motion for disbursement of funds held in the Court's registry. (Motion to Dismiss, Doc. 29; Motion for Summary Judgment, Doc. 32; Motion for Disbursement, Doc. 36) Padilla, proceeding pro se, did not file a response to any of these motions.

In March 2020, the United States Magistrate Judge issued a Report and Recommendation (Doc. 38) recommending that all three of Ditech's motions be granted. No party filed objections.¹ The Court finds no plain error in the Report and Recommendation.

As a result, the Court **ADOPTS** the Report and Recommendation (Doc. 38).

It is **ORDERED** that Defendant Ditech Financial, LLC's Motion to Dismiss as a Result of Bankruptcy Court Order Enjoining Defendant's Claims (Doc. 29) is **GRANTED**. All claims for damages by Plaintiff Joe Padilla against Defendant Ditech Financial, LLC are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

¹ Service can be effectuated by "mailing it to the person's last known address—in which event service is complete upon mailing". FED. R. CIV. P. 5(b)(2)(C). The Report and Recommendation was twice sent by certified mail to Padilla's address on file, but was returned as unclaimed each time. (Docs. 41, 43) The document was then sent by regular mail, but was returned as undeliverable. (Doc. 42) No forwarding address is available. (Doc. 41, 42, 43) A "pro se litigant is responsible for keeping the clerk advised in writing of the [litigant's] current address." Local Rule 83.4. As Padilla has not done so, he is solely responsible for any failure to receive the Report and Recommendation. *See Lewis v. Hardy*, 248 F. App'x 589, 593 n. 1 (5th Cir. 2007).

It is also **ORDERED** that Defendant Ditech Financial, LLC's Amended Motion for Summary Judgment (Doc. 32) is **GRANTED**. Plaintiff Joe Padilla's claims for wrongful foreclosure and breach of contract against Defendant Ditech Financial, LLC are **DISMISSED WITH PREJUDICE**. This judgment will not serve as res judicata for any future lawsuit for wrongful foreclosure or breach of contract if a foreclosure occurs.


It is also **ORDERED** that Defendant Ditech Financial, LLC's Motion to Release Funds from Court Registry (Doc. 36) is **GRANTED**. The Clerk of Court is direct to release the full amount of funds related to this matter currently held in the Court's registry to counsel for Defendant Ditech Financial, LLC at:

Bradley Arant Boult Cummings, LLP
Attn: S. David Smith
600 Travis St., Suite 4800
Houston, Texas 77002.

Within 30 days of any disbursement of funds, Defendant Ditech Financial, LLC should send Plaintiff Joe Padilla an updated mortgage statement with instructions on where to send future payments. No party shall make future payments related to this matter to the registry of the state or federal court.

The Clerk of Court is directed to close this matter.

Signed on June 23, 2021.


Fernando Rodriguez, Jr.
United States District Judge